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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 96th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 15 November 1991, at 3 p.m.

Chairman: Mr. VOYAME

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Australia (CAT/C/9/Add.8) (continued)

1. At the invitation of the Chairman, Mr. Walker and Mr. Broome (Australia) took places at the Committee table.

2. Mr. GIL LAVEDRA (Country Rapporteur), referring to paragraph 98 of the report, which stated that "Australia does not make extradition conditional on the existence of a treaty", asked whether the Convention against Torture was regarded as a sufficient legal basis for granting extradition to a country which had requested it.

3. Another matter on which he would like clarification was whether the Mutual Assistance in Criminal Matters Act referred to in paragraph 100 was part of federal legislation.

4. With regard to the training provided to police and prison officers, he pointed out that the replies contained in paragraphs 102 to 107 related only to Tasmania, Queensland, Western Australia and New South Wales. What was the situation in the other States, the Northern Territory and the Australian Capital Territory? Were the rules which professional ethical codes and the Hippocratic Oath imposed on members of the medical profession binding in all States?

5. Referring to custody and the treatment of detainees, he expressed surprise that the report made no mention of the authority competent to decide on detention. Could an accused person be held incommunicado in Australia and, if so, for how long? Did an accused person have the right to communicate with his lawyer or to undergo a medical examination? Within how much time was he required by law to be brought before a judge?

6. In paragraph 111, it was stated that all acts of torture were considered offences under the criminal law and as such would be investigated and prosecuted according to special procedures in all jurisdictions. He would like to know more about specific legislation, such as the South Australian Police Act 1985, which established investigation procedures, and to have further information on the relevant legislation in different States.

7. With regard to prison inspections, as referred to in paragraph 115, he requested information about the authority in each State responsible for monitoring both measures of detention and conditions and accommodation in prisons. The Human Rights and Equal Opportunity Commission was apparently authorized at the federal level to hear complaints from detainees who considered that they had been subjected to ill-treatment, but what federal authority was ultimately responsible for prison institutions?

8. He also asked about the legal basis for the statement in paragraph 130 that confessions or admissions obtained by coercion would be inadmissible as

evidence in Australian courts. Since Australia had a federal system, were specific arrangements made within each jurisdiction to ensure that such statements could not be used as evidence?

9. It was very difficult to grasp all the subtleties of a system which was as complex as the Australian legal system. To understand fully how it worked would require in-depth knowledge of the machinery of each State which could not be fully described within the framework of a single report. He therefore had the impression that he had put questions to several legislatively and politically independent States.

10. Mr. MIKHAILOV (Alternate Country Rapporteur) welcomed the report submitted by the Australian authorities, which was both complete and specific.

11. Referring to paragraph 58 of the report, which stated that the definition of torture, as contained in the Convention, was incorporated in Australian domestic legislation, he asked whether all the objective and subjective aspects of torture were covered by the Crimes (Torture) Act 1988 and to which penalties persons who had committed crimes which might be assimilated to any form of torture were liable.

12. In paragraph 77, it was stated that a person found guilty of aiding and abetting in the commission of an offence was liable to a maximum penalty of two to five or even ten years imprisonment, depending on the criminal legislation involved and the State in which the offence had taken place. He was surprised that there was such a wide range of penalties and asked whether, for example, the maximum penalty of five to ten years' imprisonment applicable in South Australia served to punish other offences as well or applied when there was a combination of offences.

13. He also asked whether "assault", which was prohibited under criminal law, was considered a crime against peace?

14. With regard to 132 and 133 of the report, he had wondered what legal and administrative penalties were applicable to public officials who inflicted "cruel, inhuman or degrading treatment or punishment".

15. The CHAIRMAN, speaking as a member of the Committee, commended the very well structured report submitted by the Australian Government. He was not at all disconcerted by a federal system which was comparable to that of his own country, Switzerland, where 28 different codes of penal procedure coexisted, but he did have some difficulty in understanding the division of legislative power between the central authority and the States. Which bodies were competent to make criminal law?

16. He asked whether all forms of torture and their sequelae as referred to in the Convention were covered by Australian legislation.

17. In paragraph 103, it was stated that "persons under arrest shall be afforded no justification for saying that their treatment has been other than civil and reasonable". He asked about the meaning of that sentence, which might give the impression that the police were not civil to persons under arrest.

18. Concerning article 11 on the treatment of detainees, he asked whether the systematic reviews carried out in Australia involved unannounced visits by judges to places of detention.

19. With regard to the compensation of victims of torture, he wished to know whether the term "injury", which referred to bodily injury and mental and nervous shock, also covered any physical or psychological trauma which might be caused by ill-treatment. The maximum amount which could be awarded as compensation did not seem very high. He was also surprised that the children of a victim were not entitled to any compensation for grief (paras. 124 and 125).

20. He requested to have further information on paragraph 126, which gave the impression that compensation was paid to persons who had financially maintained a deceased victim, but not to those who had depended financially on him.

21. The report seemed to indicate that an offence committed by a public official did not always entail State responsibility. Was that in fact the case?

22. He pointed out that paragraphs 130 and 131 of the report referred only to confessions and admissions obtained by force and not to statements of all kinds, which, under article 15 of the Convention, also included evidence and expert reports.

23. Mr. WALKER (Australia) thanked the members of the Committee for the trouble they had taken to grasp all the subtleties of the Australian legal system and to prepare such specific questions. He recognized that a federal system might sometimes be difficult to understand, but undertook to make it clearer by emphasizing its many advantages. Under the Constitution, the federal Government could, after having ratified an international instrument, enact legislation to implement its provisions at the federal level. That federal legislation was then enforced by the courts of the States and self-governing territories.

24. That procedure, which had been followed on quite a few occasions, was, however, not the preferred one, especially in the case of human rights instruments, as it involved a number of political and practical disadvantages. The States and territories enjoyed legislative autonomony; they were therefore entitled to be surprised if the federal Government adopted legislation in areas within their jurisdiction. In practice, two different types of legislation might then be applicable and that would create confusion. The Government could therefore take another approach, which was longer but fairer. Before acceding to the Convention against Torture, the federal Government had consulted the authorities of the different States and self-governing territories and had asked them to ensure that their legislation prohibited all acts covered by the Convention. Those texts did not all use the exact wording of the Convention, but their common objective was to prevent torture. Where there were gaps, the State concerned was required to amend legislation accordingly. That procedure took time, and that was why the federal Government was slow to become a party to international instruments,

but it did make it possible to state, on behalf of all law enforcement officials throughout the federal territory, that all jurisdictions fully implemented the provisions of the Convention.

25. In reply to members of the Committee who had asked whether the Crimes (Torture) Act 1988 amended any of the provisions of the Criminal Code of the Australian Capital Territory, he pointed out that any discrepancies related only to offences committed in other countries, and not in Australian territory.

26. Mr. BROOME (Australia) said that corporal punishment was prohibited in most if not all public educational institutions. Private schools which reserved the right to apply such punishment first had to have the consent of parents or to have informed them of the special circumstances in which corporal punishment might be inflicted.

27. Mr. WALKER (Australia) said that any application for asylum made by a person who could not claim refugee status, as defined by the 1951 Convention, but who might be subjected to torture if he returned to his country of origin was communicated to the Minister for Immigration, who could grant an entry permit for humanitarian reasons. Before taking such a decision, he nevertheless requested the opinion of an ad hoc committee composed of Ministry of Justice and Foreign Ministry officials and representatives of non-governmental organizations and the Office of the United Nations High Commissioner for Refugees.

28. Mr. BROOME (Australia), replying to the question he had been asked about what happened to a foreign national who applied to be able to stay in Australia, although he had committed a criminal offence, said that the request was transmitted to the ad hoc committee or to a representative of the Ministry of Justice, who ensured that the authorities in charge of prosecution took the appropriate decisions, in accordance with the obligations established by international treaties, the Convention against Torture and the Crimes (Torture) Act 1988.

29. Mr. WALKER (Australia), referring to the universal jurisdiction of Australian justice, said that any person who had committed an offence outside Australian territory was liable to the penalties provided for by Australian criminal law.

30. Mr. BROOME (Australia), commenting on annex H to document CAT/C/9/Add.8, which reproduced the Mutual Assistance in Criminal Matters Act, said that the Act enabled Australia to fulfil its bilateral and multilateral obligations relating to investigations. A country which wanted an investigation to be conducted in Australia could so request the Attorney-General, who would assign an examining magistrate to carry out that task in the same way as for an Australian court. The magistrate's report was then transmitted to the country in question.

31. The training of police officers could vary from State to State, but all States had established intensive and regular programmes in which police officers received information about their statutory obligations. The federal police also had a similar programme. It could be said that, in Australia, both police officers and prison staff were informed of their obligations under the Convention.

32. Mr. WALKER (Australia) stressed the fact that military personnel had no jurisdiction over civilians and that they received training similar to that of the police in so far as their rights and duties were concerned. Electro-shock therapy had apparently been abandoned; he believed that he would be able to confirm that to the Committee at a later stage. In relation to a question on the internment of mentally ill patients, he said that, in Australia, no one could be detained other than by a court order. If a person who had agreed to be admitted to a psychiatric establishment later wished to leave, it was up to the medical personnel to decide, in the patient's interest, whether he should be allowed to do so. In that connection, he noted that the Human Rights and Equal Opportunity Commission was carrying out a broad study on the rights of mentally ill persons.

33. Mr. BROOME (Australia) said that his delegation would provide additional information on the legislation of the States of the Australian Commonwealth relating to the rights of the mentally ill. To his knowledge, federal rules required that a decision concerning a mentally ill person's release from an institution or the continuation of his treatment had to be taken by several doctors.

34. The training of medical personnel in prisons and psychiatric institutions dealt with problems which had previously been unknown, such as migrant medicine. Various bodies were qualified to consider cases involving injuries suffered either by persons interned in Australia or by migrants in their countries of origin. A service of the Ministry of Immigration was specifically responsible for such matters and provided its officials with training which enabled them to recognize victims of torture or serious injury. In 1989, three grants had been made for a treatment and rehabilitation programme for victims of torture and trauma in which doctors, dentists, occupational therapists, psychiatrists and voluntary associations were taking part. Financing for that programme was continuing.

35. Mr. WALKER (Australia), replying to a question from the Committee, said that he was not in a position to say exactly how many persons were in rehabilitation centres.

36. Mr. BROOME (Australia), replying to a question by Mr. Burns, said that the post of ombudsman had been created in the mid-1970s and that, since then, there had been one ombudsman in each State plus a federal ombudsman. They could investigate without restriction all the activities of Government bodies and their investigations, which were taken very seriously by those concerned, could lead to the persons responsible being brought to court, to fines or to administrative penalties. In reply to another question by Mr. Burns, he emphasized the fact that testimony obtained by extortion was never taken into consideration. With regard to the relationship between the authorities responsible for refugees, health and prisons, he pointed out that the specialist Refugee Status Review Committee was composed of representatives of the Foreign Ministry, the Ministry of Justice, the immigration services and a non-governmental organization and was advised by a UNHCR representative. That Committee acted as an appeal body when the immigration authorities had, in the first stage, refused to grant immigrant status; it could make recommendations to the public authorities.

37. Mr. WALKER (Australia), replying to a question by Mr. Perlas, said that he did not have statistics on cases of torture; what was more, the Convention did not seem to have been invoked in Australia. However, he could state that all complaints against the police in 1989-1990 had been investigated and that, in many cases, the court's conclusions had been in favour of the complainants.

38. Mr. BROOME (Australia), replying to another question from the Committee, said that police custody varied according to the State, but the maximum was 6 hours; it could, however, be extended for medical reasons to allow time to enter into contact with a lawyer or if the judge lived far away. Any statement by a person in police custody beyond the maximum period was inadmissible. Once they had been charged, persons in police custody were, in most cases, released on bail. Pre-trial detention was therefore unusual in Australia. Legal aid was available in all Australian jurisdictions; the federal Government had an annual budget of $A 100 million for that purpose.

39. Mr. WALKER (Australia) informed Mr. Perlas that the offence of torture was not specifically defined in Australian Commonwealth legislation and that the authors of the report (CAT/C/9/Add.8) had not so much sought to be exhaustive as to give an illustration of the main lines of the Australian system.

40. Mr. BROOME (Australia) said that extradition could not be granted in Australia if it involved a breach of the obligations assumed by the country under international treaties. It was therefore not possible to extradite a person who might be liable to capital punishment in the country to which he would be extradited. Extradition treaties provided for the recognition of international human rights instruments and could be amended when Australia ratified new conventions.

41. With regard to the training of medical personnel and, in particular, the training of doctors who examined refugees to detect possible traces of torture, he said that he had taken note of the comments by Mr. Sorensen.

42. Mr. BROOME (Australia) said that the National Health and Medical Research Council, a national medical research body, had recognized the need to assist persons who had suffered injury or torture.

43. A professor of medicine had been requested to draw up a report to determine the psychological and other problems that affected refugees and torture victims and to define the services and assistance to be provided to such persons. If the completed report contained elements of interest to the Committee, the Australian Government would draw attention to them in its next report to the Committee.

44. Mr. WALKER (Australia), replying to a member of the Committee who had asked whether the prohibition against torture was provided for in the Constitution, said that that was not the case and that, in fact, very few basic rights were provided for in the Constitution.

45. With regard to Ms. Chanet's interesting comment about the list of offences which corresponded to acts of torture, which might reveal possible gaps or anomalies and which, for example, raised the question of the

difference between bodily harm and grievous bodily harm, he said that the characterization of the offence depended on the evaluation of the judge; the severity of the penalty was in proportion to the seriousness of the offence. He did not see any "gap" in the list of offences which would enable anyone to commit torture with impunity. He pointed out that current practice tended towards uniformity of sentences. The fact that a person who committed acts of brutality was a public official made the offence more serious in that it brought it within the scope of the Convention. Moreover, that fact generally involved an additional penalty, namely, the dismissal of the official.

46. In connection with the commission of inquiry into conditions of detention of Australian aborigines, reference had been made to the Royal Commission on Aboriginal Deaths in Custody, which had carried out its mandate very fully. The Federal State and Governments had started to take measures to apply the Commission's recommendations. It should be noted that the reforms being implemented were likely to be applied to all detainees and not only to aboriginal detainees.

47. Mr. WALKER (Australia) said that it had been difficult for some members of the Committee to understand Australian legislation and the operation of the legal system, as described in the report, because it had not been physically possible to provide information on the legislation of all States or to transmit to the Committee records of judgement, which were essential in the common law system. It was also true that some paragraphs, such as paragraph 34, related to rights, such as the right to the protection of privacy, which were not specifically covered by the Convention. In an effort to be complete, the authors of the report had perhaps introduced too much non-essential information which interfered with an overall understanding of the document. He also took note of the comments of Mr. Gil Lavedra on the over general nature of paragraph 30. That paragraph was in fact intended as an introduction to subsequent paragraphs, which were more detailed. It was the federal Government which was responsible for the fulfilment of Australia's international obligations. It ensured that the legislation of each State was in conformity with the obligations resulting from international commitments.

48. Mr. BROOME (Australia), referring to the division of jurisdiction between the Federation and the States (para. 26 of the report), said that federal areas of jurisdiction were specifically enunciated in the Constitution; all others belonged to the States. For example, trade, foreign affairs, telecommunications and immigration services came within federal jurisdiction. The federal courts heard offences against the laws adopted by the Federal Government in those fields. Generally speaking, criminal law was a matter for the jurisdiction of the States. Offences which constituted a violation of the Convention were punished according to the legislation of the State concerned.

49. With regard to the Human Rights and Equal Opportunity Commission and its links with the States, he said that it worked in liaison and in cooperation with related bodies in the States. There were arrangements by which, for example, a particular body could act as the representative of another. If a complaint was filed with the Commission, it conducted an investigation. When the nature of the offence so permitted, for example, in the case of an act of discrimination based on sex, the Commission would try to settle the matter between the competent authorties and the complainant by putting a halt to the

conduct in question and, possibly, providing compensation for the victim. If the nature of the offence justified proceedings, the Commission transmitted the results of the investigation to the police of the State concerned, which determined whether the act was a violation of the legislation of that State. The fact that the Commission was a federal body guaranteed that, if necessary, all those responsible for an offence could be charged and that complaints would not go unheard. The Commission had never had before it an allegation of conduct amounting to a violation of the Convention.

50. Mr. WALKER (Australia), referring to the composition of the Commission (para. 31 of the report), said that racial discrimination, sexual discrimination and the protection of privacy were the three areas where complaints were most frequent. The Human Rights Commissioner was responsible for all complaints not within the jurisdiction of other commissioners and, consequently, for offences which were within the scope of the Convention. He was currently paying specal attention to questions relating to the mentally ill and the rights of the child. As to the competence of the ombudsman, each State and the Commonwealth had either an ombudsman or a body with the same powers which was authorized to hear complaints concerning both State and federal legislation. A person who was a victim of a human rights violation could therefore apply to several bodies. Despite the risk of duplication of effort, it was better to have too many rather than too few.

51. Mr. BROOME (Australia), replying to a question on the applicability of article 4, paragraph 2, of the Convention, said that the Australian legal system was a discretionary one in which the judge had the power to determine the nature of the offence and to decide the appropriate penalty in the light of the seriousness of the offence. The system also authorized the Attorney-General to appeal against a penalty which was obviously inadequate. Any act of torture would therefore be liable to an appropriate penalty that took account of the seriousness of the offence.

52. In reply to a question relating to the basis of the principle that the order of a superior or public authority could not be invoked as a justification of torture, he said that that was a common law principle, even if it was embodied in some legislative texts. In addition, the Crimes Act 1900 was not anachronistic, as its original text had been amended several times.

53. Replying to a request for clarifications concerning paragraph 89 of the report, which stated that Australia interpreted article 5, paragraph 3, as having no operation in relation to Australia, he said that federal law explicitly provided that there was no legitimate excuse for acts of torture and that such acts were unacceptable whatever the circumstances. The authors of the report had intended to make it clear that Australia had fulfilled its obligations under article 5 of the Convention to the greatest extent possible.

54. The meeting was suspended at 5.05 p.m. and resumed at 5.15 p.m.

55. Mr. WALKER (Australia), supplementing Mr. Broome's replies at the request of the members of the Committee, said that there was a medical association which regulated medical studies and the subsequent practice of medicine and had the authority to dismiss a doctor form the association for unethical

practice. He agreed that paragraph 110 of the report was rather brief and that the next report should be more detailed. There was no federal prison as such; any person found guilty of a violation of a federal law served his sentence in a State prison.

56. Several members of the Committee had expressed concern about the fact that Australian law did not attach enough importance to psychological and mental suffering, which was not specifically mentioned. It should be made clear that the offence of assault did not necessarily mean physical assault. In common law, any threat of assault, any intimidation or any threat against a third person could be covered by the concept of assault, which therefore included mental and psychological suffering.

57. Mr. BROOME (Australia) said that Australia was in a position to affirm that, despite the fact that legal systems and structures varied from one State to another, legislation on the gathering of evidence was such as to rule out the use of evidence obtained other than by lawful means because the States which had codified the gathering of evidence had not in any way amended the common law rule which prohibited the use of evidence obtained other than by lawful means.

58. He agreed that paragraph 103 of the report was badly drafted; the content of the third subparagraph simply meant that the persons concerned should never have occasion to complain about not having been treated other than civilly and reasonably.

59. With regard to article 11 of the Convention, which called for systematic reviews of all provisions relating to interrogation, he stressed that the fact that the conduct of a trial was totally independent of the police investigation which had preceded it was a guarantee in addition to the possibility of making a complaint either to the ombudsman or to members of parliament and the press.

60. In reply to some members of the Committee who had expressed surprise at the rather low amount of compensation, he said that, in addition to the compensation provided for by law, the victim could bring an action against the person responsible and even, as appropriate, against the Government. There was also the possibiliy of ex gratia compensation, particularly in cases of abusive sentencing.

61. In reply to a question about the Antarctic, he said that, despite the absence of a permanent population, the law was definitely applicable there.

62. Concerning paragraphs 130 and 131, he said that not only confessions or admissions obtained by torture were inadmissible as evidence before the courts, but also all evidence obtained under similar conditions (expert reports, statements etc.).

63. Mr. KHITRIN said that he would like to know how Australia could justify life sentences in cases of rape. That was a penalty that could be characterized as cruel. Nothing comparable existed in most countries. He

wished to have figures indicating the number of sentences and the number of persons imprisoned for rape and to know whether the majority of persons in prison were not members of the indigenous population.

64. Mr. BROOME (Australia) said that the sentences given as examples were the maximum penalty; the sentence in each case was left to the discretion of the judiciary and, in practice, a life sentence amounted to 20 years' imprisonment. The sentence would also depend on the circumstances of the offence. The Australian population as a whole would none the less never agree that rape was not an offence deserving of exemplary punishment. He could not quote figures, but would provide them in writing at a later stage. He was, however, in a position to say that persons convicted of rape were not only members of the indigenous population. He gave examples to show that, when rape was accompanied by aggravating cicumstances, it entailed harsh penalities.

65. The CHAIRMAN warmly thanked the delegation of Australia for its precise and clear report and replies, as well as for its close cooperation with the Committee.

66. Mr. GIL LAVEDRA joined in the Chairman's congratulations, for, apart from the subleties of purely legal questions, the fact was that the standards were applied throughout the country. It might nevertheless be appropriate to include a more specific definition of torture in the legislation, as that was one of the main criteria used by the Committee against Torture.

67. Mr. SORENSEN said that he had been very impressed by the written and the oral reports of Australia and warmly thanked the Australian Govenment for its efforts in that regard.

68. Mr. BURNS (Country Rapporteur) congratulated the Australian delegation on its report and replies and thanked it for having been willing to answer the Committee's questions without any preparation. Australia was in the forefront of countries defending fundamental human rights. The fact that a definition of torture was not incorporated in a legislative text was not a violation of the Convention. He also commended Australia on the large number of rehabilitation services offered to victims of torture.

69. Mr. PERLAS (Alternate Country Rapporteur) said that he endorsed Mr. Burns' comments.

70. The CHAIRMAN, speaking on behalf of the Committee, sincerely thanked the delegation of Australia and indicated that Australia had made a declaration under articles 21 and 22.

71. Mr. Walker and Mr. Broome (Australia) withdrew.

The meeting rose a 5.55 p.m.